



July 17, 2002

Ms. Mary E. Reveles  
Assistant County Attorney  
Fort Bend County  
301 Jackson, Suite 621  
Richmond, Texas 77469-3108

OR2002-3919

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165778.

Fort Bend County (the "county") received four written requests for records pertaining to an internal affairs investigation of a named deputy sheriff. Additionally, one of the requestors, an attorney representing the named deputy, seeks all of his client's personnel files. You contend that the submitted information is excepted from required public disclosure pursuant to sections 552.108, 552.117, and 552.130 of the Government Code.<sup>1</sup>

We note at the outset that one of the requestors has also posed questions to the county regarding the use of polygraph examinations. The Public Information Act does not require a governmental body to answer factual questions. *See* Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions). On the other hand, a request made pursuant to the Public Information Act may not be disregarded simply because the requestor does not specify the exact documents desired. A governmental body should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow the request. *See* Open Records Decision No. 87 (1975). You have not submitted to this office for review any information that is responsive to the various questions received by the county or arguments as to why any responsive documents should be excepted from required public disclosure.

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<sup>1</sup>We assume the county has released the other requested information to the requestors. If it has not, it must do so at this time. *See* Gov't Code § 552.301, .302.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office within fifteen business days of receipt of an information request "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld" and "a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(A), (D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. You have not provided this office with any compelling reason to withhold information responsive to the various questions. Consequently, if the county can identify records containing information responsive to the questions posed by the requestor, the county must release the responsive information to the requestor.

We now address the applicability of the exceptions you raised to the submitted documents. Section 552.108 of the Government Code, in part, excepts from required public disclosure information held by a law enforcement agency only in relation to a criminal investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2), (b)(2). Please note that absent special circumstances, a peace officer's personnel file is not excepted from required public disclosure pursuant to section 552.108. *See* Open Records Decision No. 423 (1984). Consequently, the county must release all of Exhibits C and D to the requestor representing the named deputy, except for the following information.<sup>2</sup>

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov't Code § 552.352.

We first note that the documents you submitted to this office as Exhibit D contain criminal history record information ("CHRI"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections

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<sup>2</sup>Although we recognize that portions of Exhibits C and D are excepted from required public disclosure pursuant to sections 552.117(2) and 552.130 of the Government Code, the requestor, as the authorized representative of the deputy, has a special right of access to that information. *See* Gov't Code § 552.023.

411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. Consequently, the county must withhold the CHRI documents contained in Exhibit D pursuant to section 552.101 of the Government Code.

We next note that Exhibit D also contains an accident report form that has been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The release of this accident report is governed by chapter 550 of the Transportation Code. Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the county with two of the three pieces of information. Consequently, the county must withhold the accident report pursuant to section 550.065 of the Transportation Code.

Exhibit D also contains declarations of medical and psychological and mental health required by the Texas Commission on Law Enforcement Officer Standards and Education that are confidential pursuant to section 1701.306 of the Occupations Code. Section 1701.306 provides as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

- (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and
- (2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Therefore, the county must withhold the submitted declarations pursuant to section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Finally, Exhibit D contains motor vehicle registration information to which the requestor does not have a right of access. Section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the county must withhold the license plate and VIN numbers contained in Exhibit D pursuant to section 552.130(a)(2).

We now address the extent to which the records of the internal affairs investigations may be withheld under section 552.108. After reviewing the submitted records, it is apparent to this office that most of the submitted records were created for the sole purpose of conducting internal affairs investigations. Because internal affairs investigations are administrative, as opposed to criminal, in nature, section 552.108 is generally inapplicable to such investigations, which cannot result in conviction or deferred adjudication unless the IAD investigation is conducted in conjunction with a criminal investigation. *See also Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable where no criminal investigation resulted); *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967) (Fourteenth Amendment prohibits use of police officers' statements obtained under threat of removal in subsequent criminal proceedings). Because most of the internal affairs records do not pertain to a criminal investigation of the peace officer, we conclude that most of these records are not excepted from public disclosure under section 552.108.

On the other hand, after reviewing the records at issue, we conclude that some of the information contained in Exhibit G directly pertains to a criminal investigation. Where a complaint that might result in criminal charges is under active investigation, the material may be withheld under section 552.108 during the pendency of the investigation and prosecution. Open Records Decision No. 350 (1982). We therefore conclude that section 552.108(a)(1) applies to this information, which we have marked. Accordingly, the county may withhold pursuant to section 552.108(a)(1) only that information we have marked in Exhibit G. The remaining information in Exhibits E, F, and G must be released to both requestors, with the following exceptions.

Contained in Exhibit E are police reports and other documents pertaining to alleged delinquent conduct. Section 58.007(c) of the Family Code provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

(1) kept separate from adult files and records; and

(2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Because Offense Report Nos. 02-2081 and 000000164 come within the scope of section 58.007(c), we conclude that the county must withhold these reports in their entirety pursuant to section 552.101 of the Government Code. Furthermore, because one of the purposes of section 58.007 confidentiality is to protect the privacy interests of juveniles, we have marked additional information in Exhibit E that the county must withhold to protect those juveniles' privacy interests in accordance with section 58.007. *See* Open Records Decision No. 394 at 4 (1994).

Several of the remaining documents contain information made confidential under section 552.130 of the Government Code. As discussed above, the county must withhold the license plate and VIN numbers contained in the submitted records pursuant to section 552.130(a)(2) if those numbers were issued in Texas. The county must also withhold pursuant to section 552.130(a)(1) all Texas driver's license numbers. Additionally, the county must withhold pursuant to section 552.130(3) any information that relates to "a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." We have marked a representative sample of the types of information the county must withhold pursuant to section 552.130.

Finally, one of the submitted records in Exhibit E contains a social security number. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. However, this office has no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the county should ensure that it was not obtained and is not maintained by the county pursuant to any provision of law enacted on or after October 1, 1990. The remaining submitted information must be released to the requestor, except as discussed above.

In summary, the county must release documents responsive to the questions posed by one of the requestors to the extent such records exist. The county must also release Exhibits C and D to the requestor seeking the deputy's personnel files, except for CHRI, the accident report, the declarations of medical and psychological health, and the information we have marked as being protected by section 552.130(a)(2) of the Government Code. The county must also release to all requestors Exhibits E, F, and G, except for the information we have marked as being excepted from required public disclosure pursuant to sections 552.108 and 552.130 of the Government Code and section 58.007 of the Family Code. The county must also withhold the social security number contained in Exhibit E, but only if the number is confidential under the federal Social Security Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

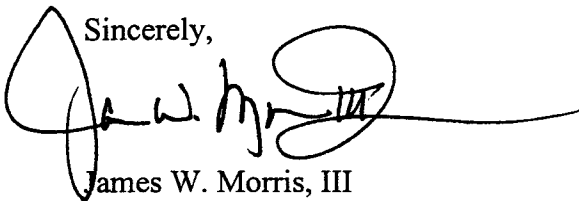
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/RWP/sdk

Ref: ID# 165778

Enc: Marked documents

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